IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

JOHN ELMY, individually and on behalf of all other Similarly situated person,

Plaintiffs,

v.

Case No.: 3:17-CV-01199
Judge Crenshaw
Magistrate Judge Frensley

WESTERN EXPRESS, INC., NEW HORIZONS LEASING, INC., and JOHN DOES 1- 5,

Defendants.

MOTION ON BEHALF OF WESTERN EXPRESS, INC., AND NEW HORIZONS LEASING, INC., TO COMPEL ARBITRATION AND STAY OR DISMISS THIS CASE PURSUANT TO FED. R. CIV. P. 12(b)(1) & (b)(3)

Comes now the Defendants, Western Express, Inc., and New Horizons Leasing, Inc., by and through counsel of record, R. Eddie Wayland and R. Douglas Hanson, II, and moves this Honorable Court for an Order compelling arbitration and staying or dismissing this case pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, Fed.R.Civ.P. 12(b)(1) & (b)(3) and 28 U.S.C. § 1404(a). This Motion is predicated upon the following grounds:

(1) Plaintiff, John Elmy, entered into a contractual relationship governed by a contractual agreement containing arbitration and class action waiver provisions;

(2) Elmy's arbitration and class action waiver provisions are enforceable, this case should be referred to arbitration, and NLRB v. Alt. Entm't, Inc., 858 F.3d 393 (6th Cir. 2017), is inapplicable to the facts in this case for the **exact same** reasons set forth in Judge Trauger's September 1, 2017, decision in Doe v. Déjà Vu Consulting, Inc., 2017 U.S. Dist. LEXIS 142019, *31 (M.D. Tenn., Sept. 1, 2017);

(3) Elmy is estopped from asserting that he did not agree to arbitrate against nonsignatory and/or undefined John Doe Defendants pursuant to the same reasoning applicable in Déjà Vu Consulting, Inc., as all Defendants, including the

nonsignatory Defendants, have been lumped together throughout a "one size fits all" Complaint;

(4) The FAA provides no room for judicial discretion. Courts must order the parties to proceed to arbitration on all issues covered by an arbitration agreement. See 9 U.S.C. §§ 3 & 4; see also Dean Witter Reynolds, Inc., 470 U.S. at 218 (1985);

(5) "[A]ny ambiguities in the contract or doubts as to the parties' intentions should be resolved in favor of arbitration." Stout v. J.D. Byrider, 228 F.3d 709, 714 (6th Cir. 2000); and

(6) "Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 945 (1995).

Accordingly, Defendants respectfully request that this Court enter an Order: (1) compelling arbitration as to all Defendants and all claims; (2) holding that Elmy is estopped from asserting that he did not agree to arbitrate his claims against New Horizons Leasing and/or all nonsignatory Defendants; and (3) that Elmy has waived his right to pursue a class action and collective action and/or refer this issue to arbitration to be decided by the arbitrator. Defendants further request that this Court dismiss or stay this case in favor of arbitration. The reasons for granting this motion are more fully set forth in the memorandum in support being filed contemporaneously herewith.

Respectfully submitted,

By: *s/ R. Douglas Hanson, II*
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was electronically filed with the Court and electronically served on date reflected in the ECF system upon:

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